

NORTH CAROLINA INDUSTRIAL COMMISSION

**I.C. No. 18-009687, Valerie Wilson, Plaintiff, v. Forsyth County Board of
Commissioners, Defendant-Employer, and PMA Companies, Defendant-
Administrator**

FINAL COMPROMISE SETTLEMENT AGREEMENT

THIS COMPROMISE SETTLEMENT AGREEMENT, A FINAL SETTLEMENT
AND RELEASE, was made and entered into on the 22nd day of October, 2018, by and
between Plaintiff and Defendants.

On July 11, 2017, Plaintiff, who was then age 54 with a date of birth of

, was employed as an In-Home Service Aid by Defendant-Employer, where she
had worked for approximately twenty years. Plaintiff's approximate average weekly
wage on July 11, 2017 was \$570.30, resulting in a compensation rate of \$380.20. On
that date, Plaintiff alleges that she injured her back and left arm while carrying groceries
for a client.

Defendants denied the body part claim pursuant to a Form 61, which was filed on

March 15, 2018.

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By signing this document, Plaintiff, by and through counsel, certifies to Defendants and to the North Carolina Industrial Commission that she makes no further claim for total or partial wage loss as a result of her alleged July 11, 2017 injury.

Plaintiff contends that she sustained a compensable injury on July 11, 2017 arising out of and in the course of her employment with Defendant-Employer and that she is therefore entitled to substantial benefits under the North Carolina Workers' Compensation Act, including, but not limited to, payment of medical bills, additional treatment for injuries to the back and left arm, and compensation for anticipated future permanent partial impairment ratings to any and all affected body parts.

Defendants contend that Plaintiff did not sustain a compensable injury, that she was not injured in the course of her employment, that her claim for workers' compensation benefits was reasonably denied, and that she is therefore not entitled to any benefits.

The parties have conferred together, at a mediated settlement conference conducted by Reid McGraw on October 22, 2018, Plaintiff being represented by Rizzi Law Group, P.A., Attorneys of Winston-Salem, North Carolina, and Defendants being represented by Goldberg Segalla, L.L.P., Attorneys of Raleigh, North Carolina, and have decided that it is in the best interests of all concerned to enter into an agreement where all matters and things in controversy arising out of the alleged July 11, 2017 injury would be settled with the payment to Plaintiff of FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00), in one lump sum, without commutation, in settlement of all claims under the North Carolina Workers' Compensation Act arising prior to the date of this agreement, whether asserted or unasserted. This sum represents the settlement of a disputed matter and not an admission of liability, and is in lieu of any disability or other workers' compensation benefits, including but not limited to those which might otherwise have been claimed for a change in condition or progression of any condition which might develop in the future, medical, death or any other benefits, which are or may be due Plaintiff, her dependents, her estate or any other representative of Plaintiff now or at any time in the future pursuant to the North Carolina Workers' Compensation Act. The parties and their respective counsel also stipulate and agree that this settlement is fair and just, that the interests of all parties and of any

person or entity, including a health benefit plan, that paid any of the medical expenses of Plaintiff have been considered, and that there is a need for finality in this litigation.

For the purposes of Social Security disability offset, the parties set forth a compensation rate as listed here. Plaintiff is a 55-year old female with a life expectancy of 25.1 years or 1,305.20 weeks pursuant to N.C.G.S. Section 8-46. It is anticipated that Plaintiff would receive \$3,750.00 from the settlement after attorney fees have been subtracted. The parties set forth a compensation rate of \$2.87 per week by taking the number of years plaintiff is expected to live (1,305.20 weeks) and dividing it into the net amount Plaintiff will receive from the settlement (\$3,750.00), to yield a weekly compensation rate of \$2.87. This compensation rate of \$2.87 is to be used by the Social Security Administration in determining their offset due to Plaintiff's receipt of workers' compensation benefits. This paragraph affects no other rights or responsibilities which are set forth elsewhere in this agreement.

The parties have considered Medicare's interests with regard to the settlement of the medical portion of this claim, as required under the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2), *et seq.*, and the current MSP regulations, codified at 42 C.F.R. § 411.20, *et seq.*

The parties have considered whether Medicare has made any payment, conditioned upon possible reimbursement, for medical services allegedly related to the July 11, 2017 injury for which Defendant-Insurer may be deemed responsible by Medicare as a primary payer. Plaintiff represents and stipulates that Medicare has not paid any medical bills whatsoever, whether associated with the July 11, 2017 injury or

otherwise, since Plaintiff is not a Medicare beneficiary and is not Medicare eligible. Accordingly, the parties rely upon Plaintiff's representation that Medicare has not made any payment for medical care on behalf of Plaintiff and there is no possible Medicare conditional payment issue. Plaintiff agrees to hold Defendants harmless for any loss of Medicare benefits or for any recovery the Centers for Medicare and Medicaid Services ("CMS") and/or the Benefits Coordination & Recovery Center ("BCRC") may pursue based upon any incorrect or inaccurate information provided by Plaintiff. Plaintiff further agrees that based upon the parties' consideration of Medicare's reimbursement rights in the negotiated terms of this settlement, there is no valid right to a private cause of action for damages because Defendants have not failed to provide for primary payment and/or appropriate reimbursement.

The parties have further agreed to resolve the portion of Plaintiff's claim involving future medical treatment. It is not the intention of the parties to this agreement that responsibility for future medical treatment related to the July 11, 2017 injury will be shifted from Defendants to Medicare or the federal government. The parties understand that in certain circumstances, a Workers' Compensation Medicare Set-Aside Arrangement ("WCMSA") may be necessary to protect the interests of Medicare and/or Plaintiff as a current or future Medicare beneficiary in conjunction with the full and final settlement of a workers' compensation claim. The parties have considered and evaluated whether a WCMSA should be established in this case. Considerable attention has been given by all parties to Plaintiff's potential for future entitlement to such benefits and reasonable consideration of Medicare's interest.

Defendants have paid no medical expenses related to July 11, 2017 injury due to the disputed nature of those expenses. Pursuant to 11 NCAC 23A .0502(b), the list of disputed medical expenses and the respective party responsible for the payment(s) of the disputed medical expense(s), if applicable, is attached as Exhibit B. Plaintiff, the party responsible for payment of all disputed medical expenses, if any, as listed in Exhibit B, will notify the respective unpaid medical provider in writing of its responsibility to pay. The parties and their respective counsel stipulate and agree that the positions of all parties to this agreement are reasonable as to the payment of medical expenses. Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under N.C.G.S. § 97-26.

Plaintiff certifies that any and all known liens or potential liens involving Medicare, Medicaid, the Internal Revenue Service, Child Support Enforcement, or other agencies of federal, state or local government have been revealed to Defendants, and Plaintiff agrees to hold harmless Defendants regarding any such liens. The parties acknowledge that Plaintiff's certification contained in this paragraph is a material representation relied upon by Defendants in entering into this agreement.

Plaintiff has agreed to settle her case for less than the full amount of reasonably anticipated future benefits for a variety of reasons. Settlement will provide for a known amount of recovery, eliminating uncertainty as to the future, such as the possibility that Plaintiff will die in an accident or from an unrelated health problem. Further, Plaintiff will derive emotional benefit from the elimination of the workers' compensation system from

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her life and from the increased control she will have over her medical treatment and other aspects of her life.

Plaintiff represents to the North Carolina Industrial Commission that by execution of this agreement, she knowingly and intentionally waives her right to further benefits under the North Carolina Workers' Compensation Act, but it is agreed that no rights other than those arising under that Act are compromised or released by this Agreement.

The parties acknowledge that any opinions stated by physicians or other medical providers regarding the nature and extent of Plaintiff's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Plaintiff further acknowledges that her condition may be progressive and that recovery is uncertain and indefinite. Accordingly, Plaintiff and Defendants agree that they will not seek to set aside this settlement agreement in the future on the basis that any party, in entering into this agreement, relied on incorrect statements or opinions from physicians or other medical providers regarding the diagnosis or prognosis of any injury, whether now known or unknown, resulting from the alleged July 11, 2017 injury.

Defendants agree to pay all costs incurred, as that term is currently defined by the North Carolina Industrial Commission and agree to waive all credits for Plaintiff's share of North Carolina Industrial Commission fees.

Defendants agree to pay the entire mediator's fee and agree to waive any credit for Plaintiff's share of that fee pursuant to a separate agreement.

Plaintiff agrees that in making this Agreement, she was not influenced by any representations or statements regarding her condition, the nature of her injuries, or any other matters concerning her claim before the North Carolina Industrial Commission, made by any person, firm, corporation, physician, or surgeon acting for or on behalf of Defendants; that the facts in connection with her employment and with her resulting injuries and impaired physical condition, if any, are fully known, understood, and comprehended by Plaintiff, and that her rights under the Workers' Compensation Act are thoroughly and completely understood by her.

In consideration of the compensation payments recited, Plaintiff has and does release and forever discharge not only for herself but also for her heirs, next of kin, and/or personal representative(s), Defendants respectively, of and from any and all and every manner of action and actions, cause or causes of action, suits, debts, dues and sums of money, judgments, demands, and claims, which against Defendants, she ever had or may have by reason of or growing out of the terms and provisions of the North Carolina Workers' Compensation Act, on account of the alleged July 11, 2017 injury, which give rise to this claim for compensation and for any subsequent disability sustained by her, or medical bills incurred by her.

Plaintiff expressly agrees that any and all rights which she may have or which may arise as a result of any change of condition under and by virtue of the provisions of Chapter 97 of the North Carolina General Statutes, giving her the right to reopen this claim for compensation or medical benefits at any time within two years from the date of the last payment of compensation under an Award by the North Carolina Industrial

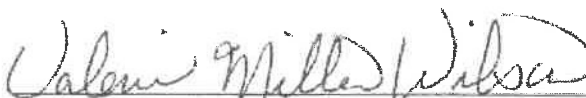
Commission are waived, and Defendants respectively, are expressly and particularly released from any and all further liability to her by reason of any right or claim Plaintiff, Plaintiff's heirs, next of kin, and/or personal representative(s) may have, or which may arise, to reopen this action and claim further benefits, whether compensation, medical, or otherwise.

All parties to this agreement specifically stipulate that the North Carolina Industrial Commission may consider the matters now before it in passing on this compromise agreement, subject to the conditions previously stated. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission by its award duly issued, and the same shall be binding upon all parties when approved by said Commission. All parties further agree that, in the event the North Carolina Industrial Commission does not approve this agreement, nothing contained here shall be construed as an admission of liability in any future proceedings before the North Carolina Industrial Commission or any other tribunal.

It is further understood that the rights and remedies of Plaintiff against Defendants as a result of Plaintiff's employment and her alleged July 11, 2017 injury are governed and controlled by the North Carolina Workers' Compensation Act, and that all of such rights are being compromised, adjusted and forever resolved.

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By the signatures below, Plaintiff and Defendants accept the terms of the settlement described here.


Valerie Wilson, Plaintiff

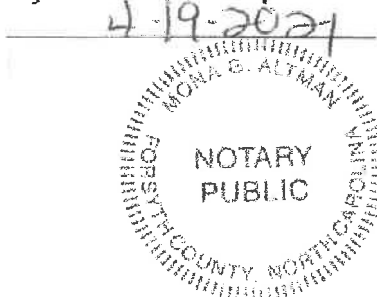
Consented To.


Michael Rizzi, Attorney for Plaintiff
North Carolina State Bar No. 21257

NORTH CAROLINA
Forsyth COUNTY

Personally appeared before me this 7 day of Nov., 2018, Valerie Wilson, who, being first duly sworn, acknowledged the execution of the foregoing agreement for the purposes and considerations therein expressed.

My Commission expires:




Notary Public


Forsyth County Board of Commissioners ,
Defendant-Employer

BY:


Gregory S. Horner
Attorney for Defendants
North Carolina State Bar No. 35346

PMA Companies,
Defendant-Administrator

BY:


Gregory S. Horner
Attorney for Defendants
North Carolina State Bar No. 35346